

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**ORDER
Criminal No. 04-496 (MJD/RLE)**

WALTER PIWOWAR (1),

Defendant.

Richard Newberry, Assistant United States Attorney, Counsel for Plaintiff.

Scott Tilsen and Virginia Villa, Federal Public Defenders, Counsel for Defendant.

An indictment may charge a criminal defendant in separate counts with two or more offenses if the offenses charged are based on the same act or transaction or are connected with a common scheme or plan. Fed. R. Crim. P. 8(a). This rule is broadly construed in favor of joinder. United States v. Moyer, 313 F.3d 1082, 1085 (8th Cir. 2002) (citing United States v. Darden, 70 F.3d 1507, 1526 (8th Cir.1995)). However, if the joinder of offenses in an indictment or consolidation for trial appears to prejudice either a defendant or the Government, the court may order separate trials on the counts. Fed. R. Crim. P. 14(a).

The Court finds that defending against the mail fraud claims at this time would prejudice Defendant Piwowar. In so finding, the Court is mindful that in

June 2004 Magistrate Judge Erickson denied Defendant's motion to sever counts. [Doc. No. 58.] The Court's current decision is based on recent discussions with Counsel for both Parties. Therefore, the mail fraud counts are severed from the felon in possession of a firearm and felon in possession of ammunition counts.

The Court will conduct a trial on the felon in possession charges beginning November 29, 2005. A new date certain will be set for trial on the mail fraud charges.

Accordingly, **IT IS HEREBY ORDERED:**

1. Counts 1 and 2 of the Superceding Indictment are severed from Counts 3 through 6 of the Superceding Indictment;
2. The criminal trial beginning on November 29, 2005 will be a trial on Counts 3 through 6 of the Superceding Indictment only; and
3. A "Date Certain Order" for trial on Counts 1 and 2 will be issued in the near future.

Dated: November 29, 2005

s / Michael J. Davis
Michael J. Davis
United States District Court